

**HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
Writ Appeal No.282 of 2007**

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Between:

K. Raja Reddy

... Appellant

And

A.P. State Road Transport Corporation and others

... Respondents

::JUDGMENT::

Counsel for the appellant: Shri P. Rajagopala Chary

Counsel for respondent No.1: Shri K. Srinivasa Rao

Counsel for respondent No.3: Government Pleader for
Transport

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April 12, 2007

Per G.S. Singhvi, CJ

This appeal is directed against order dated 14-11-2006 vide which the learned Single Judge allowed the writ petition filed by the

Andhra Pradesh State Road Transport Corporation (for short, 'the Corporation') and quashed order dated 23-8-1995 passed by Presiding Officer, Andhra Pradesh State Transport Appellate Tribunal, Hyderabad (for short, 'the Tribunal') for grant of permit to the appellant to operate bus service on Jagitial to Kanapur route and, at the same time, directed cancellation of the permit of the Corporation.

At the outset, we consider it appropriate to mention that the direction given by the learned Single Judge for cancellation of the permit of the Corporation has been set aside by the Division Bench in Writ Appeal No.155 of 2007. Therefore, the only question which requires determination in this appeal is whether the Tribunal could, while setting aside the order passed by the Regional Transport Authority, Karimnagar (respondent No.3), issue direction for grant of permit to the appellant and whether the learned Single Judge rightly quashed the order of the Tribunal.

A perusal of the record shows that the application made by the appellant for grant of permit to operate service on the route in question was rejected by respondent No.3 on the premise that the road is extremely narrow and the buses cannot ply on the same. For the sake of reference, the relevant portion of order dated 17-2-1994 passed by respondent No.3 is reproduced below:

“The route is inspected and it is found that in portion, the road is extremely narrow and the vehicles (buses) cannot ply on the road. Hence, permit is rejected.”

The Tribunal allowed the appeal preferred by the appellant and directed respondent No.3 to issue permit in his favour. Paragraphs 8 and 10 of the Tribunal's order reads as under:

“8. The word 'narrow' to be understood only by comparing the dimensions of the road. The Secretary, R.T.A., said it is not motorable road but he has not given the

statistics like width of the road etc. Thus the narrowness cannot be understood where the bus cannot ply. Thus the impugned order is not supported with reasonable grounds to reject the application for permit. Hence, the impugned order is liable to be set aside.

10. In the result, appeal is allowed and the impugned order in question of the 1st respondent is set aside. The permit in the route in question is granted in favour of the appellant. The 1st respondent is directed to issue permit to the appellant for the route in question on the production of records within four months from the date of this order.”

The learned Single Judge allowed the writ petition filed by the Corporation and quashed the order of the Tribunal by observing that the reason assigned by respondent No.3 for refusing permit to the appellant was legally correct.

We have heard learned counsel for the parties and perused the record. In **Hans Raj Kehar v. State of U.P.** ^[1], the Supreme Court interpreted Section 43-A of Motor Vehicles Act, 1939 (for short, ‘the old Act’), which was inserted by the Motor Vehicles (Uttar Pradesh Amendment) Act, 1972 and held as under:

"It hardly needs much argument to show that the larger number of buses operating on different routes would be for the convenience and benefit of the travelling public and as such would be in the public interest. Any measure which results in larger number of buses operating on various routes would necessarily eliminate or in any case minimise long hours of waiting at the bus stands. It would also relieve congestion and provide for quick and prompt transport service. Good transport service is one of the basic requirements of a progressive society. Prompt and quick transport service being a great boon for those who travel, any measure which provides for such an amenity is in the very nature of things in the public interest.... The contention that the impugned notification is violative of the rights of the appellants under Article 19(1)(f) or (g) of the

Constitution is equally devoid of force. There is nothing in the notification which prevents the appellants from acquiring, holding and disposing of their property or prevents them from practising any profession or from carrying on any occupation, trade or business. The fact that some others have also been enabled to obtain permits for running buses cannot constitute a violation of the appellants' rights under the above two clauses of Article 19 of the Constitution. The above provisions are not intended to grant a kind of monopoly to a few bus operators to the exclusion of other eligible persons. No right is guaranteed to any private party by Article 19 of the Constitution of carrying on trade and business without competition from other eligible persons. Clause (g) of Article 19(1) gives a right to all citizens subject to Article 19(6) to practise any profession or to carry on any occupation, trade or business. It is an enabling provision and does not confer a right on those already practising a profession or carrying on any occupation, trade or business to exclude and debar fresh eligible entrants from practising that profession or from carrying on that occupation, trade or business, the said provision is not intended to make any profession, business or trade the exclusive preserve of a few persons. We, therefore, find no valid basis for holding that the impugned provisions are violative of Article 19."

In **Mithilesh Garg v. Union of India**^[2], the Supreme Court compared the provisions contained in the Motor Vehicles Act, 1988 (for short, 'the new Act') relating to grant of permit with similar provisions contained in the old Act and observed:

"The Parliament in its wisdom has completely effaced the above features. The scheme envisaged under Sections 47 and 57 of the old Act has been completely done away with by the Act. The right of existing operators to file objections and the provision to impose limit on the number of permits have been taken away. There is no similar provision to that of Section 47 and Section 57 under the Act. The Statement of Objects and Reasons of the Act shows that the purpose of

bringing, in the Act was to liberalise the grant of permits. Section 71(1) of the Act provides that while considering an application for a stage carriage permit the Regional Transport Authority shall have regard to the objects of the Act. Section 80(2), which is the harbinger of Liberalisation, provides that a Regional Transport Authority shall not ordinarily refuse to grant an application for permit of any kind made at any time under the Act. There is no provision under the Act like that of Section 47(3) of the old Act and as such no limit for the grant of permits can be fixed under the Act. There is, however, a provision under Section 71(3) (a) of the Act under which a limit can be fixed for the grant of permits in respect of the routes which are within a town having population of more than five lakhs.”

In the light of the above noted legal position, we shall consider whether rejection of the appellant’s application by respondent No.3 was legally correct and the Tribunal was justified in directing respondent No.3 to issue permit in favour of the appellant and also whether the learned Single Judge committed an error by quashing the Tribunal’s order.

A reading of order dated 17-2-1994 shows that the solitary reason assigned by respondent No.3 for rejecting the application of the appellant was that the road is extremely narrow and the vehicles (buses) cannot ply on the road. While doing so, respondent No.3 conveniently ignored the policy of liberalisation enshrined in the new Act; the fact that the Corporation was already operating buses on the route in question and that there was no evidence to show that the plying of buses had endangered safety of the people.

If the Tribunal had set aside order dated 17-2-1994 and remitted the matter to respondent No.3 for fresh consideration of the appellant’s application, the learned Single Judge may not have found any fault with order dated 23-8-1995. However, the fact of the matter

is that the Tribunal not only annulled the order passed by respondent No.3, but went a step further and directed the issue of permit to the appellant. While doing so, the Tribunal ignored the fact that no material was produced by the parties for determining the suitability of the route and the need for additional service. Therefore, the order impugned in this appeal cannot be faulted insofar as it results in setting aside of the direction given by the Tribunal.

However, the order under challenge can appropriately be termed as taking two steps backward because the learned Single Judge not only quashed the Tribunal's order, but also directed cancellation of permit of the Corporation, which was not even subject matter of challenge in the latter's writ petition. If the Division Bench had not set aside the direction given by the learned Single Judge, the people of the area would be deprived of by transport service. In our opinion, the only appropriate course which could be adopted by the learned Single Judge was to remand the case to respondent No.3 for fresh determination of the application made by the appellant for grant of permit.

In the result, the appeal is allowed. The order of the learned Single Judge is set aside and the matter is remitted to Regional Transport Authority, Karimnagar for fresh determination of the application made by the appellant for grant of permit. The authority concerned shall pass appropriate order in accordance with law within a period of three months from today after hearing the representations of the appellant and the Corporation.

As a sequel to disposal of the main appeal, WAMP No.539 of 2007 filed by the appellant for interim relief is also disposed of as infructuous.

G.S. SINGHVI, CJ

April 12, 2007

C.V. NAGARJUNA REDDY, J

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[\[1\]](#) AIR 1975 SC 389

[\[2\]](#) AIR 1992 SC 443